

MAR 15 2004

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In re Gale Norton,

Secretary of the Interior  
in her official capacity,

Petitioner.

No. 03-5288

**REPLY IN SUPPORT OF MOTION TO ASSIGN  
CONSIDERATION OF THIS MANDAMUS PETITION  
TO THE PANEL BEFORE WHOM RELATED  
MANDAMUS PETITIONS HAVE BEEN SCHEDULED FOR  
ARGUMENT ON MARCH 15, 2004.**

The government has asked that its mandamus petition seeking to disqualify the Special Master be heard by the same panel considering other mandamus petitions seeking disqualification of the Special Master. As we explained, the government moved to disqualify the Special Master on May 29, 2003, and we are eager for a resolution at the earliest possible time. Assignment to the same panel considering related petitions would further the goal of an early resolution.

Plaintiffs' suggestion that the cases are unrelated is difficult to fathom. Cases are "related" if they involve "substantially the same parties and the same or similar issues." Local Rule 28(a)(1)(C). The mandamus petitions arise out of the same litigation. They seek disqualification of the same Special Master. They both involve a pattern of ex parte contacts, although, in the case of the government's petition, the Special Master not only engaged in ex parte contacts but hired a complaining witness to assist in the preparation of his report. Moreover, if the Court agrees that the Special Master should be disqualified from further

participation in this litigation, as the government has argued, that outcome would clearly bear upon the relief requested by the individual petitioners.

The question is not, as plaintiffs believe, whether other members of the Court would be able to absorb the facts and law pertinent to the government's mandamus petition. Plainly they would. But plaintiffs offer no reason whatsoever that would suggest that assignment to the panel already considering related petitions is inappropriate.

Respectfully submitted,

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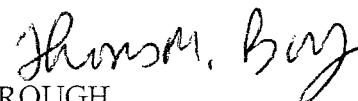
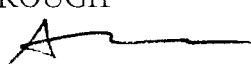
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MARCH 2004

## CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2004, I am causing the foregoing motion for assignment to be served on the following in the manner specified:

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The Honorable Royce C. Lamberth  
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A handwritten signature in black ink, appearing to read 'Alisa B. Klein', positioned above a horizontal line.

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Alisa B. Klein